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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/697,994	10/26/2000	Dawn C. Maurer	RATLP005C1	7430

26541 7590 08/15/2003

RITTER, LANG & KAPLAN
12930 SARATOGA AE. SUITE D1
SARATOGA, CA 95070

EXAMINER

ELISCA, PIERRE E

ART UNIT	PAPER NUMBER
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3621

DATE MAILED: 08/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/697,994

Applicant(s)
Jeffrey A. Straathop et al.

Examiner
Pierre E. Elisca

Art Unit
3621



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Dec 20, 2002
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 30-46 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 30-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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DETAILED ACTION
RESPONSE TO AMENDMENT

1. This Office action is in response to Applicant's amendment filed on 12/20/2002.
2. Claims 30-46 are pending.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

4. **Claims 30-46 are rejected under 35 U.S.C. 102 (e) as being patentable by Rodrigues et al. (U.S. pat. No. 6,408,403).**

As per claim 30-39, Rodrigues discloses a computer operable for integrating and automating test procedures within a computer application program. The test operation objects are instantiated by calls to functions in a test operation runtime (which is readable as Applicant's claimed invention wherein it is stated that a method of producing scripts for load testing a software application), comprising: capturing call on a computer system to emulate a user (see., abstract, col 8, lines 1-59);

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recording timing information of the captured calls (see., col 9, lines 13-20, specifically wherein it is stated that automated testing to be performed at any time in the application program development lifecycle or timing information);

generating a script from the captured application calls according to the timing information of the captured calls to emulate the user (see., abstract, col 3, lines 28-67, col 8, lines 30-59, col 7, lines 3-25).

As per claims 40-46, Rodrigues discloses a computer operable for integrating and automating test procedures within a computer application program. The test operation objects are instantiated by calls to functions in a test operation runtime (which is readable as Applicant's claimed invention wherein it is stated that a method of producing scripts for load testing a software application), comprising: computer code that captures call on a computer system to emulate a user (see., abstract, col 8, lines 1-59);

computer code that records timing information of the captured calls (see., col 9, lines 13-20, specifically wherein it is stated that automated testing to be performed at any time in the application program development lifecycle or timing information);

computer code that generates a script from the captured application calls according to the timing information of the captured calls to emulate the user (see., abstract, col 3, lines 28-67, col 8, lines 30-59, col 7, lines 3-25).

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RESPONSE TO ARGUMENTS

5. Applicant's arguments filed on 12/20/2002 have been fully considered but they are moot in view of new ground (s) of rejection.

Conclusion

6. Any inquiry concerning this communication from the examiner should be directed to Pierre Eddy Elisca at (703) 305-3987. The examiner can normally be reached on Monday, Tuesday, and Wednesday from 5:30AM. to 6:00PM.

If any attempt to reach the examiner by telephone is unsuccessful, the examiner's supervisor, James Trammell can be reached on (703) 305-9768.

Any response to this action should be mailed to:

Commissioner of patents and Trademarks

Washington, D.C. 20231


Pierre Eddy Elisca

Patent Examiner

July 28, 2003